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International Court of Justice

- Sauckel

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Pleadings

Dr. Servatius

May it please the Tribunal.

The defence of the defendant Sauckel has, in the first place, to deal with the charge of "slave labor".

What is slave labor ?

One cannot accept this as an established concept comprehending all the occurrences with which the defendant Sauckel is, in a bewildering abundance, charged under the heading slave labor.

Those actions, particularly, ought first to be examined from a juridical point of view. The legal basis for this examination is the Charter.

However, this C h a r t e r does not say what is to be understood by "slave labor" and what by "deportation". Therefore, these concepts should be clarified by interpretation.

Art. 6 of the Charter speaks, in two passages and from two different points of view of "deportation" and of "slave labor".

Deportation is called both a war crime and a crime against humanity, and forced labor appears as well as "slave labor" under the heading of war crimes, as as "enslaving" under the heading of crimes against humanity.

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The question, under what heading the deployment of labor (Arbeitseinsatz) of the defendant Sauckel should fall is of decisive importance; if it is a war crime, then it should be judged exclusively by martial law. If it is a crime against humanity then the latter presupposes the commission of a war crime or of a crime against peace.

It follows thereof that deportation mentioned in Art. 6 (b) cannot be the same thing as deportation according to Art. 6 (c) nor can forced labor according to Art. 6 (b) be identical with forced labor of Art. 6 (c).

The difference between the two kinds is to be found in the fact that something contrary to humanity has to be added to the war crimes.

The correctness of this interpretation may also be recognized in the t e r m i n o l o g y of the Charter, however fluctuating it may be. For instance, the Russian text for deportation as a war crime chooses the word "uvod", which only means removal from a place, while on the other hand it uses, for crimes agains humanity of the same kind, the technical expression "ssylka" under, which penal deportation under the rule of the czars is understood as identical in sense with deportation as penal deportation.

One can deduce therefrom that simple removal from occupied territory for labor purposes is only to be considered as a war crime, but that removal becomes a crime against humanity when it assumes the penal character of a transportation of prisoners.

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Yet the question arises whether, beyond this, according to the Charter, any removal of the population is punishable as a war crime, without considering whether it occurs for deployment of labor or for other reasons.

According to the text of the Charter, the latter seems at first sight to be the case, as it renders punishable "removal for slave labor, or for any other purpose."

Upon closer examination, however, it becomes evident that this rule does not seem to be meant in such a sense, as there are cases, in which a removal is not only consistent with international law , but even becomes imperative.

Accordingly, the Charter should only be understood to mean that the prerequisite of the punishable is not just plain "removal" but the composite concept "removal for slave labor" and "Removal for any other purpose".

The clause "or for any other purpose" should be understood so as to mean only that an illegal purpose corresponding to slave labor exists. If removal of any kind was to be made punishable, then the qualifying addition "for slave labor or for any other purpose" would be contradictory to common sense.

This identification is important for the defendant Sauckel, as otherwise the existence of deportation classified as a war crime would be evident from the acts admitted by him.

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Just as for the various kinds of deportation, the difference between the kinds of slave labor according to the Charter should be clarified. Here too a clue for the interpretation is given by the t e r m i n o l o g y of the different linguistic versions of the text, but not because of their clarity and consistency, but by their very opposite:

The English version speaks of "Slave labor" as a war crime and of "enslavement" as a crime against humanity; the French version states "travaux forcés" and "reduction en esclavage", the Russian version accordingly "rabstvo" (-Slavery) and "poraboschtschenie" (-enslavement). It is not discernible how the chosen terms differentiate in re.

Starting from the fact that labor inconsistent with humanity must be carried out under more severe conditions than other labor, and considering that "slave labor" appears to be the severest form of labor conditions, one sees that no definition can be derived from this terminology of the Charter, rather that an ethical valuation and stigmatization of the incident is intended.

Accordingly, an objective division of the kinds of labor should be carried out, independent of the terminology, by considering exclusively the degree of severity of labor conditions. If one tries to analyze the terminology used, one finds the designation "enslavement", "esclavage" and "poraboschtschnie", for the inhuman form of labor, whereas the labor not inconsistent with humanity is called "forced labor", travaux forcés" and "prinudidjenaja rabota". Slave labor ("Slave labor, travaux forces and rabstvo) consequently is the general term comprehending both kinds.

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What does this verification mean for the defence of the defendant Sauckel ?

The defendant Sauckel admits having negociated the "forced labor" in the form of compulsory labor which, as stated before, is being termed by "slave labor" in general.

He denies, however having demanded slave labor, which could have been considered as inhuman labor, i.e. enslavement

A different standard applies here, just as for deportation, to the facts of these two cases; "compulsory labor" is but a war crime and is to be judged according to rules of war; the crime against humanity has got, as already stated above for the deportation as crimes against humanity, the additional features: connection with war crimes or crimes against Peace.

If it can be proven that the mobilization of manpower, as ordered by the defendant Sauckel, was permitted by the rules of war, then the same act cannot be held to be a crime against humanity.

The i n d i c t m e n t too has made a difference as to the kinds of labor. It has treated, under par. three, chap. VIII, H, as a separate war crime under the title of "Conscription of civilian labor", the mobilization of manpower directed by the defendant Sauckel, which I shall call "regulated labor conscription ", "geordneten Arbeits-einsatz" and speaks here

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only of "forced labor", the French version speaks here of "travaux forces" and uses terms such as "les obligerent a travailler" and "mis en obligation"; the Russian version follows this and also speaks only of "enforced labor" as "prinuditjelenaja rabota", but not of this being slave labor.

The defendant Sauckel does not deny the facts taken here as a basis, but I shall submit the legal reasons which justify this mobilization of labor and I shall prove that it does not involve any war crime inconsistent with international law.

The rules of international law are authoritative when considering the question whether "regulated labor conscription" is a war crime. The Charter cannot prohibit what international law permits in wartime. Such international law is laid down in the agreements on rules of war and in the general legal principles and usages as they are applied by the States .

The prosecution, when judging the labor conscription as a war crime, bases it on the definitions of the Hague convention on land warfare, as well as on the agreements and rules of war and the criminal codes of the countries concerned.

If it is shown that the labor conscription is permitted by international law, than a judicial inquiry into the penal regulations is, of course, not necessary.

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Dr. Servatius

The Hague Convention on Land Warfare can be considered as basis for the law of warfare with which we are concerned here. Whether it was recognized by all states involved here is of practically little importance, as for, inasmuch as it was not recognized, or cannot be directly applied, there is a gap in the international law which is closed in accordance with the principles of necessity for belligerent and with the duty for staying within the boundaries of humanity. The principles of international law as established in the Hague Convention on Land Warfare are in all cases an important guidance.

The prosecution quotes in the first place Art. 46 of the H.C.o.L.W. which is to safeguard the fundamental rights of the population. It is typical for forced labor that it restricts liberty, but it is exactly this basic right which is not protected by this article.

If the H.C.o.L.W. is examined for a definite rule concerning deportation and forced labor it will be realized that there is no such regulation. Just as in the sphere of air warfare and the use of new weapons, the H.C.o.L.W. could not deal with questions, which at the time of its drafting were far from the mind of the contracting parties. The first world war was still fought between 2 armies with already prepared material and the fight should be ended after it is used up. The idea of a long war which is a war of material and which requires a continuous production with all available labour was for the H.C.o.L.W. no problem to be discussed.

Art. 52 of the H.C.o.L.W. which deals with the principle of the right for requisition touches on the matter under discussion, but it can be seen that the rules deal only with the merely local requirements of the army which appears to be equipped and which has only additional local requirements.

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It is characteristic for the purely local meaning that the authority for requisitions is entrusted to the local commanders, in contrast to Art. 51 of the H.C.O.L.W. which permits only an independent commanding general to impose compulsory contributions. The literature about the right for requisition in international law quotes accordingly only examples of local significance.

Although Art. 52 of the H.C.o.L.W. can accordingly not be directly applied, its basic principles are nevertheless binding on the belligerents.

The basic idea is that the army can demand practically everything that is necessary for the satisfaction of their requirements. There are only 2 limitations: it can not take more than it needs and not more than is compatible with the resources of the country.

The idea of the <u>local duty for supply</u> "oertlichen Leistungspflicht" is to adapt to modern warfare.
The H.C.o.L.W. thought of the use of smith's and wheelwrights which were necessary for the maintenance of the equipment of the army; work inside the country of the occupying power was, with regard to the undeveloped transportation conditions, out of the question and could not be considered.

Today, the necessary work cannot be done any more near the front lines but must be done in the belligerent's own countries. It must therefore be possible to demand labor where it can only be done and where it is necessary.
It must be possible to demand this work also for the new war requirements of mass production for the current replacements.

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What is necessary at any given time can be demanded and the amount depends on the respective conditions. If in earlier times, according to the principle: the war supplies the war, the equipping of the army, detached from the homeland with regard to transportation, was also done on a large scale in the occupied territory, it must be possible to day to supply the army by moving the workers to the factories in the country of the belligerent. The evolution of the law of Warfare is influenced by the requirements to which this law has to serve.

With the basic idea of the duty for supply the basic idea of the limitation has to be accepted. These limitations must also be interpreted in accordance with the changed conditions.

If the duty for supply is justified, no more work can be demanded than the occupying power demands from its own people at home. The intensity of the war as total war must be taken in consideration. The duty for supply may hereby become very large.

The meaning and the purpose of the H.C.o.L.W. is certainly not to place the nationals of a defeated state in a better position than those of the victorious state which occupies the country. This, however, would be the result if the H.C.o.L.W. would be interpreted according to its original wording. If this is claimed, France which had unconditionally capitulated, as well as the other occupied countries could have looked on in security how Germany, strangled by the blockade, exhausted herself in an indefatigable struggle in sacrifices of life and property.

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Can one really demand that the prisoner in a besieged fortress lives better than the defender of the fortress ?

If Germany could live to day according to the idyll of the H.C.o.L.W., this would be preferable to the burden of the peace treaty to be expected.

Actually the H.C.o.L.W. has not been adhered to in its original interpretation, if it is true that already before the conclusion of the armistice agreement the Soviet Union as occupying power transferred the population on a large scale from the eastern parts of Germany for work outside Germany. The Tribunal could obtain official information about this through an inquiry with the Control Council. Also I have information that German civilian internees are used for work in France to day. Here too the Tribunal coul obtain official information.

The second limitation of the duty for work is embodied in the rule that no participation in war enterprises agains the fatherland of the worker can be demanded.

Any work for the occupying power benefits indirectly its war effort; the prohibition is therefore restricted on direct participation in "operations" of the fighting force. The literature on international law contrasts the participation in military operations with the permissible participation in preparations.

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A participation in war operations in this sense was asked of no worker; rather the purpose was to keep workers employed unmolested, away from these operations.

Consequently only such activity, as is directed against one's own country is forbidden. Thus, the feeling of the individual is to be taken into consideration. The protection of the enemy state is not aimed at. Wherever therefore the individual renounces his country and, in the struggle of ideologies, opposes the government of his country, such a restriction can not be kept up. In connection with this it is pointed to the great amount of foreigners, who adopted such an attitude and who, in part, still live in Germany today.

The same applies, when the state, to which the worker belongs, has ceased fighting.

This question is of special importance with regard to the obligation to work in the armament industry. The rules of the Geneva Convention, with regard to work, permissible for prisoners of war are known. The basic notion, that no one may be forced, to make weapons against his own brother, must apply to civilian workers also.

The fact, however, that one's country is no longer in a state of war is one of the reasons, that nullify this restriction. The need for protection also ceases to exist, when a country - though legally participating in war - no longer is able to furnish proper resistance in the field with fighting forces and thus ceases to exist as a military object of attack.

The fact, that this very country has allies, who fight for it, cannot arbitrarily extend this restriction beyond agreements of the Geneva Convention; it also is not the duty of a subject of a State to protect allies fighting for him and to participate in the policies of his government.

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Puppert Governments cannot change reality. Recognition cannot be granted to them unless they come forward as independant fighters under command of their own and if they recognised as such.

These aspects apply to all States defeated by Germany.

At the time of the mobilization of labor only England, the United States and the Soviet-Union were active combatants against Germany. Englishmen and Americans were not subjected to this mobilization, although citizens of the Soviet-Union were in part used in the armament production.

The legal position of citizens of the Soviet-Union is however fundamentally different.

Under Document EC-338/USSR 356 the prosecution submitted a decision of the peoples commissars of 1 June 1941 (Beschluss der Volkskommissare). This decree involves the utilization for labor of prisoners of war; it deals however also with the employment of interned civilians. According to it, armament production is not forbidden for both forms of labor. However, two restrictions are provided for in the decree, namely: work in the combat zone and such work as might be done by an orderly.

Reciprocally speaking, no objection can be raised against the employment of Soviet citizens in armament production. During examination before the Tribunal, the witness General Paulus confirmed, that prisoners of war

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were employed in factories of the Soviet Union and that in a State with a directed economy/they will be employed in the armament industry only, for the duration of the war. According to the decree it must be assumed that these workers were employed in the armament production also.

The significance of such a violation of the principle of forbidding armament production lies in the grave consequence, that the formulation of a generally recognised rule of the International Law in the modern field of utilization of manpower cannot be proven. Under these circumstances therefore, Germany was likewise free to employ workers of the Soviet-Union and workers of all other States in the armament production.

If on one hand the Hague Convention on land warfare (H.L.O.) does not oppose regulated utilization of manpower then there remain further international aspects permitting such a utilization of manpower. The permission of the Government of the occupied State is of primary consideration. This permission has been given by France.

The objection, that Marshal Petains Government was not a constitutional Government is invalid, for it was the legitimate successor to the provisionary armistice Government. That it represented the French State to all foreign Governments is of decisive consideration in international relations. This authority of representation was confirmed by the United States, by her maintainance of an Ambassador in Vichy, even after her own entry into the war. Great Britain also agreed upon terms of an armistice with a General of the Vichy Government in Syria in 1941.

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This Government once recognised could not lose its lawful position by the simple declaration of an opposing Government even though this opposing Government might have been recognised by the Allies. A Government loses its international position only if it is forced to transfer its actual power to the opposing Government. Up to such a moment it remains Authority inside its sphere of influence.

The other objection, that the Government of Marshal Petain was not free to deal as it wanted and that consequently agreements with Germany in the field of utilization of manpower were reached by coercive measures and therefore invalid, is not justified from the point of view of International Law.

Negotiations for armistice and peace treaties are always conducted under great pressure. That this does not infringe upon the validity of such treaties, can not be denied from the point of view of international law. This has constantly been emphasized when refusing German demands for a revision of the Treaty of Versailles.

Agreements which are reached in periods between the armistice and peace treaty are subject to the same conditions. This also applies to the agreement with France with respect to the utilization of manpower. Thus, if - contrary to the statement of the defendant Sauckel - negotiations about the utilization of manpower were conducted in the form of an ultimatum, there could, from the point of view of international law still be no reason for an objection. Besides, Sauckel's influence surely could not have been so great, that he could have exerted an excessive amount of pressure.

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The validity of such agreements can only be doubted under very special conditions, that is, when unusual duties have to be performed which obviously violate principles of humanity; for instance if the agreements contain a liability to work under slavery conditions. The motive for these agreements was, however, to offer especially to the French workers favourable working conditions and salaries for their obligatory labour in Germany, and so to gain the willingness of the workers.

Military reasons too can command the evacuation of an occupied territory by parts of the population and therefore the shifting of manpower. This happens when the population participates in battle of partisans or resistance groups and so endanger security instead of behaving themselves peacefully according to their duty to obedience.

Also to eliminate this support it is already sufficient if the population in the so-called partisan territories is being enlisted even against its will.

That such conditions were organized by Germany's enemies in an increasing manner first in the East and later in the West, are looked upon today as patriotic achievements. In view of this one must not forget that the herewith connected shifting of workers was exactly the consequence of their action and that these actions were permitted by international law.

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Evacuation had to be carried out in the interest of security and assignment of labor elsewhere already was necessary to uphold order. It is the right of the occupying power, to utilize this labor in a regulated state economy as seems most practical in the prevailing conditions.

Similar measures could also take place in areas of retreat after it was ascertained that the male population took illegally part in battle during the retreat when it was summoned by the enemy and sometimes even supplied with weapons.

Evacuation measures for the security of combat troops correspond with international law; to engage evacuated persons in new work is not only legal but also the duty of the occupation administration. The State which summons its members to fight and thereby intensifies the battle, is guilty of such an evacuation. The necessary retaliations therefore must be legal.

Become such evacuations necessary then they must be carried out without undue suffering for the population. Thereto advance measures are necessary which alone can avoid these hardships. This is the duty of the administration "Verwaltungspflicht", as confirmed in article 43 of H.L.O.

Hereto appertain the proposals made by Sauckel for the evacuation of territories of retreat in France in the case of the invasion (document 1289-PS). These proposals were not materialized and can therefore not incriminate the defendant Sauckel.

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This administrative duty can also demand to shift labor in order to avoid unemployment and famine. This, for example, took place when the industrial areas of the Soviet Union were occupied and there were no more working possibilities and securing of supply after the population was unemployed because of the scorched earth policy chosen by the Soviet Union, and supply failed to arrive because of transport difficulties.

These military and adminstrative points of view of the international law can invalidate a number of reproaches, but they do not answer the basic question, namely whether the enlistment of workers is also permitted outside the H.L.O., especially for the purpose of work, i.e. to enable the state to carry on the war through increase of production and thus release its own workers for front duty.

A purely military emergency could give no excuse for disregarding international law; the endangered victory must not be pursuit by breaking the law because of necessity because the law of warfare is supposed to correct just this battle which is always connected with need.

International law decides to the contrary if a measure is concerned which has to be taken in order to safe the existance of the State. This is concerned with a law of self-preservation which every state is entitled to because higher institutions are lacking which could protect it from destruction.

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It has repeatedly been stressed by all concerned that in this war our existence was at stake . This became evident for Germany after the ominous battles at the eastern front in the winter 1941/42.

Whereas, up to that time, a general employment of foreign labor had not been necessary, now new equipment had to be produced immediately.

The number of our own workers had to be diminished by 2 million who were drafted for front-service.

The employing of unskilled women and young people could not immediately relieve the situation.

By later development, of the war, especially by the aerial warfare, the armament demands were increased to such an extent, that, in spite of the increased employment of women and young people, the level could not be maintained. The means were exhausted.

The official figures the defendant Sauckel made public in his speech in Posen in February 1943 (see document 1739-PS) proved that, already in 1939, at the beginning of the 2nd world-war, more than twice as many women were employed , than at the end of the first world-war, and that their number at the end of the second world-war had increased by another 2 million, to more than 10 million.

This number is higher than the entire number of male and female workers in the armament industry at the end of the first world-war.

In spite of that there was a shortage of labor. This has been confirmed by the witness Rohland of co-defendant Speer in document Speer-56, according to which co-defendant Speer also declared, that foreign labor was needed under all circumstances.

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The difficult part of the problem did not consist in the question of female labor, where by introducing additional home-labor one went up to the limit, but in the procuring of specialists and men for hard and hardest labor.

Among the 10 million German women who were at work, there were also the wives of officers at the front and others from the equivalent strata of society.

The opinion that in England the women were conscribed to work in a higher degree than in Germany is wrong. In Germany the women had to work till 45 years of age and later till their 50th, and they actually worked in factories and did not have fake jobs of a social kind. Even the youth of school-age was conscribed to work from the 10th year of age, and from the 16th they were switched into the regular work organization or occupied in other services. Families were spread apart. Schools and universities were closed, their pupils worked in the armament-industry and even wounded men could not continue their studies. A grim fight was on for every person capable to work. Speer's reserve of workers did not exist. It is shown among others in inclosure 2 of the Wartburg-Document (RF-810) what efforts were made in this sector.

Another point of view, illustrating the necessity of deploying additional labor, is the fact, that the Powers in possession of colonies fetched labor from their colonies; e.g. France (see document RF-22, page 17,) for instance about 50 000 workers from North-Africa and Indochina, which were under the leadership and direction of commissioned and noncommissioned officers.

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As Germany, because it had been refused colonies and on account of the blockade, could not fall back on these reserves, it has to have the possibility, in its fight for the existance of the state, to take labor there, where it is to be found inactive in occupied territories.

This is in outlines the basis with regard to international law, for judging the regulated utilization of labor as a war-crime.

One may, with regard to certain points, have a different opinion and specially in international law we find, that a common interpretation of law will be formed but with difficulty. The interests of the members of the community of international law, play an important part and are not always identical; legal principles are often not recognized, because a state does not want to put itself officially in contradiction with its former actions, or because it would like to keep its hands free for the future. As counsel for the defense I am in a position to present an interpretation of law without such inhibitions.

The significance of my statement for the defence, apart from the objective side, lies in the fact, that defendant Sauckel subjectively was entitled to believe in the lawfulness of a regulated utilization of labor and that for him his behaviour did not appear in contradiction with international law.

This was helped by the conviction which defendant Sauckel was obliged to g in from the permissibility of the well-ordered utilization of labor by the attitude of the superior offices.

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When Sauckel entered upon his office, foreign workers had already been enlisted in single actions and he could take it for granted that the State had proceeded legally.

None of the highest offices had raised legal objections toward Sauckel. These offices, especially the competent Foreign Office as well as the highest civil and military offices in the occupied territories abroad accepted his orders as a foregone conclusion and questions of doubt on international law were not raised.

For the opinion of the defendant Sauckel the attitude of the foreign offices concerned must have been especially decisive as above all the consent of the French as well as the Belgians who came to Berlin personally for discussions. From this followed the good co-operation with the local authorities in the occupied territories, as it was before the enemy propaganda intervened.

Whether the knowledge of breaking a law is necessary for committing a crime against international law may be left undecided; but to establish guilt, the knowledge of realization of all the criminal facts is necessary in order to pass a punitive sentence. Therefore it is necessary to realise that the action was carried out in violation of international law. The subjective part of facts and therewith a criminal guilt of the defendant Sauckel cannot be proven in regard to carrying out the regulated utilization of labor.

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A punishment of the defendant Sauckel could also not take place for another legal reason, even though the regulated utilization of manpower would really be a violation of international law. According to the Hague Convention on land war-fare no individual responsibility exists. The H.C.L (H.L.O. differentiates two kinds of war crimes, those which can be committed by an individual, such as murder and ill-treatment and those which can only be committed by a belligerent.
The regulated utilization of manpower is a proceeding, which can only be initiated by the state. While the individual acti is being punished according to the penal code of the individu States, so is a special regulation formulated, for the offence of the belligerent in article 3 in the introductory agreement to the H.C.L. (H.L.O.) According to that there is only an obligation for compensation agreed upon.
This agreement of the H.C.L.(H.L.O.) is still valid today, for by agreement of the Allies alone, this cannot be annulled. The Charter which orders the immediate criminal responsibility of the state-organs or its executors, is void as far as it is contradictory to the H.C.L.(H.L.O.).
I do not have to refer to it, that Germany as one of the parties to the agreement would have had to agree to the suspension of article 3; there are other reasons, which prove that this stipulation is still in force.
An alteration of the H.C.L.(H.L.O.) in the sense of the Charter could have been accomplished by prescriptive law or general custom, due to the change of legal conceptions. The presupposition to this assumption would be however, that the contracting powers would have relinquished their sovereignty ;

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as only then the punishment of the state-organs would be possible. However such a renunciation of the rights of sovereignty, as far as it is known to me, has not taken place to such an extent, which generally would permit such a punishmer With regard to that ,I refer to the general statements made by Professor J a h r r e i s s before the Tribunal.

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I am now coming to the utilization of manpower as a crime against

h u m a n i t y.

If the regulated utilization of manpower (geordneter Arbeitseinsatz) appears permissible according to international law, the question remains of the method of its execution, namely the question on how long this utilization of manpower can still be regarded as regulated and when it will go beyon permissible limit.

What is understood by humanity, the Charter does not say. The meaning for that - as far as international law is concerned - can only be seen by the practice of the nations. If one wants to find the limits for the actions permissible under international law, so must be drawn into comparison: The bombing of large cities and the use of the atom-bomb, as well as deportations and evacuations, as they are still in progress today. These are all incidents, which have occured before the eyes of the world and were regarded as permissible by the executing countries.

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Dr. Servatius

One runs again into the conception of necessity and finds, that it is being interpreted very flexible. This should well be kept in mind, if one examines the utilization of labour as to its violation against humanity. Its aim is not the stroke-like killing of hundreds of thousands, however it naturally carries hardships and certainly also mistakes, which arise unintentionally or are due to the failure of individuals. One must answer the question whether the wanted killing does not always weigh heavier than the temporary causing of other sufferings. It is to be added that the Charter does not prescribe a punishment for each violation against humanity, but only then, when the inhuman treatment has been committed in the execution or the connection of a crime, for which the Tribunal is competent.

However the tribunal is competent only for crimes against peace and war-crimes.

What concerns the crimes against peace, the defense can be permitted therefore to use the same inhuman treatment, while it is punishable when committed by the aggressor.

Or it must be considered a war-crime. This is not the case, when it deals with the wounding of subjects of its own nationality, for these are not protected by laws of warfare.

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A prosecution of an act against humanity directed against them can only happen when connected at the same time with a crime against Peace.

From a n o b j e c t i v e p o i n t o f v i e w, the deployment of labour has furthered the waging of the war which has been stated by the prosecution as a war of aggression or as a war violating treaties.

If this is established and if it is proven moreover that the deployment of labour has been carried out in an inhuman way, then the facts stated by the Charter are implied and a crime against humanity has been committed, without regard to the fact whether the deployment of labour was, as a matter of principle, allowed or not by the rules of war, as it has been committed in connection with a crime against Peace.

But a punishment can be inflicted only if the culprit knows s u b j e c t i v e l y that anunlawful war is being waged and if he furthers it by his action. As the defendant Sauckel denies any such knowledge, it must be proven.

The other possibility of committing the acts at issue lies herein that the inhuman act serves the carrying out of a war crime or is connected with it. Of the examples given by the Charter for violation of the rules of war, the following are, above all others, to be quoted in connection with deployment of labour: "Murder, ill treatments and deportation .... committed on the civilian population."

As shown by this enumeration, these war crimes which have been mentioned are not, how serious they may be, crimes against humanity by themselves.

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Something aggravating which is necessary to give the act the character of inhumanity/ must be added As shown by the example of "extermination" and "enslavement" as an inhuman act, the acts in question must be objectively of a particular scale or particularly cruel. Subjectively however, an inhuman disposition of the culprit and the knowledge of the inhumanity of the act, i.e. the knowledge of the scale of the measure of the cruelty of its execution, must be added. Inhowfar these presuppositior apply to the defendant Sauckel must be investigated later on.
A " regulated labour conscription" "geordneter Arbeitseinsatz" allowed by international law never can be a crime against humanity in itself, but its execution can be carried out in such a way that it involves killings and ill treatments, whic for their part, may be war crimes.
Such an ill treatment could be based on the regulation issued by the highest authority involved, which herewith takes responsibility. It can, however, be committed by subordinate offices acting on their own authority without knowledge or intention of the superior authorities. In this case the head of the office which acts autonomously bears the responsibility Finally, there may be question of a purely individual act committed against the regulations in force. For such an act the acting individual is responsible.

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It follows that the defendant Sauckel is responsible, to begin with, for such general orders and instructions only which he has given, but not, on the contrary, for autonomous acts of supreme authorities in the occupied territories or of supreme Reich authorities as Chief of SS and Police, which were not under his jurisdiction.

The orders and directions of the defendant Sauckel have been submitted and they must prove whether the deployment of labour ordered by him was in fact a regulated one or was tantamount to an "ill-treatment" of the population.

The deployment of labour took place, apart from the call for volunteers, on the basis of a service duty "Dienstverpflichtu which, as a matter of principle, was legally ordered, according to Hitler's orders, by the territorial commanders. The authority to issue such laws transcended the powers of the defendant Sauckel, nor could he ask for the issue of any such laws. But he has approved of them and has made them the basis of his work.

The contents of those laws were consistent with the fundamental ideas of the German laws concerning compulsory labour service. Those laws were enforced by coercion.

The use of coercive measures is not necessary as long as the legal authority of the occupying power is acknowledged by the population; they become necessary only when this authority gets lost.

In this sense, the defendant Sauckel has repeatedly asked for the maintenance of the so-called Executive by enterprises for the sweeping of territories held by partisans and for the over-powering of the resistance movement (document R-124).

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No legal objections can be raised against the fact for this purpose he demanded the use of the thereto appropriated state funds. He is wrongly incriminated only by the words "SS and Police" which has been connected by the Prosecution with the conception of crime. Such an incrimination would only be justified if the criminal character of the police had been proven and if the defendant Sauckel at that time had had cognisance of the criminal activity then taking place.
That force may be used in case of resistance against orders of the occupation force, can not be disputed. The question is where are the limits of force and whether or not there are legal and illegal, admissible and inadmissible measures of force.

If fundamental laws are not valid when a state of siege is declared within a state, then this thought is all the more applicable to an occupying power during a state of war. Anyone who refuses to carry out the orders of the occupation-power, knowingly participates in the fight to which he is not entitled and he has to accept the consequences. Obedience is duty towards the occupying power and where patriotism and obedience are conflicting, the law decides against patriotism. The punishments which are dealt out are as such not subject to any limitations and the threats of punishment by an occupation power are for the effect of intimidation usually out of all proportion in severity. The question is whether there exists a limit from the humane standpoint, which prohibits going unnecessarily beyond the purpose of the punishment and which, as beyond measure, appears to be unnecessary.

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Orders like the burning of houses which had been issued by subordinate offices independently in the carrying out of utilisation of labor , must be examined from this point of view.

This question is not easy to answer, if one considers the special circumstances and realizes that the thing involved here is an open battle between the occupying power and the population, with official support from the enemy. In case of uprisings and general resistance one can not reject the idea of the applicability of the military laws of the combat-troop necessity alone can be the decisive factor in this case. International law has put only one limit to coercive measures in forbidding in article 50 of the H.C.o.L.W. collective punishment of an entire population for the deeds of individua for which the population could not be held responsible. Presupposition hereby is, that co-responsibility has been established through actual events and has not been construed through orders.

Wherein collective punishment may consist has not been state As limits must be considered the afore mentioned: They must be the bounds of humanity; but in war this is a vague conception; necessity and suitableness of the means to the end must always have the preference.

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Next to the way of recruiting labor the conditions of work can represent an ill treatment which can be looked upon as a war-crime. On principle there can be no question of ill treatment, in case the foreign workers are treated generally the same way as the workers of the home-country.
A different treatment is only permissible in case special circumstances justify it.
Whereas this putting on the same basis was in general carried out, the so called eastern workers (Ostarbeiter) were put on.worse conditions.
The most striking item was here the limitation of freedom .
If this were arbitrary, it would be sufficient reason for declaring it an ill-treatment. But the reasons for this limitation of freedom were not arbitrary but were the need of security of the state. During wartime the stay of an enemy alien in the state-area always represents a danger and it is just for that reason that at first the bringing in of foreign workers had been renounced. It was but when the needs demanded the deployment of foreign workers, that the needs of security had to be satisfied simultaneously.
What measures are to be taken, depends upon the danger, which i different according to the attitude of the alien. Whereas the measures of policing were imperceptible with regard to the French, the eastern workers were, in the beginning, kept locked in camps.
The natural interest of the state goes in the direction of attaining security by winning the aliens over inwardly because their collaboration is desired.

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By depriving them of their freedom this is not to be achieved. As long as the attitude of the alien can not be clearly recognised, especially if he be-as the citizen of the Soviet-Union is-schooled propagandistically, more severe control may be necessary. But it should not develop into a permanent captivity, and should at most correspond to a sort of quarantine; to deprive people without guilt of their liberty for an extended period is not admissible, because it would correspond to a forbidden collective punishment. The mere assumption of danger is not sufficient for the decreasing of such limitations; there must be besides acts which show, that these foreign workers appear dangerous also under normal working conditions.

The keeping in custody of eastern workers behind barbed wire and without permission to go out for walks as ordered by Himmler, is to be regarded as an ill-treatment, if it is permanent.

The defendant Sauckel, guided by the feeling, that in this matter the limits of the permissible had been overstepped, immediately took steps against this and, in a tough fight against Himmler, demanded and obtained the withdrawal of: barbed wires and the prohibition to go out for walks, to be seen from the following decrees.(Document Sauckel 10, in Exhibit USA-206)

Where, inspite of the set regulations, the old methods were applied by the police, Sauckel always intervened when he heard of such occurences. This has been confirmed repeated by witnesses. (Exhibit Sauckel 10, witness Goetz)

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Another controversial point was the earmarking by the badge"OST" which was maintained until the year 1944 and was then replaced by a country insignia. This earmarking of the Eastern workers which could move freely among the population was necessary for police security measures. This cannot be considered an illtreatment. The rejection of this sign by the Eastern workers was based in the first place on the defamation of this badge by propaganda, and the defendant Sauckel has always tried to change this insignia and to replace it by a nationality insignia as the other workers wore it voluntarily. He finally prevailed here also against Himmler (document RF-310, page 12).

There must on principle also be equality between own and foreign workers with regard to the rules concerning maintenance of discipline.

With all belligerent states the war has raised the same problem as how to deal with such workers who do not live up to their duty of work, that means slackers, shirkers and saboteurs. The practice of discharge, common in peace time, is ineffective during war; but deserters from work cannot be tolerated to day by any belligerent. In cases amounting to sabotage police and penal measures had therefore to be taken, the most important of which was the short transfer to a labor camp; in special extreme cases imprisonment in a concentration camp was inflicted.

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The document 1063-PS / RF -345 shows the similarity in the execution of the regulations towards Germans and Foreigners.

Such police measures which are caused by the disloyal conduct of the worker are justified measures. The Wartburg-document RF-810 shows in the report of the reporting official Dr.Sturm that such measures were carried out in a very moderate manner, and that only 0,1 to 0,2 per thousand were thus punished.

Hence it follows that issuing of regulations concerning the maintenance of discipline is in itself not yet an "illtreatment" which could be the basis for a crime against humanity.

Such anillt reatment however can consist of excesses which occured outside the competence of the defendant Sauckel. He can only be held responsible for those, if the subjective facts of the case are fulfilled and if he knew of such excesses and approved of them, although he could have prevented them.

In summing up one can say that the "regulated utilization of labor" is permissible in international law and that restrictions imposed on workers within the limits of necessities must be permitted for reasons of state security

On the other hand excesses in carrying out the regulations have to be regarded as illtreatment and could mean crimes against humanity. For those he is responsible, who has instigated them or who, within the sphere of his competence did not prevent them.

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Should the extensive scale of the charges brought against defendant SAUCKEL proceed from the above stated legal considerations, it is necessary first of all to single out those fields in which the evidence reveals him to be absolutely clear of any responsibility.

In the first place, it is not proved that defendant SAUCKEL can be connected with the biological extermination of the population. His whole interest in fact has proved to have been just the opposite, since his purpose was to obtain people as laborers. With the migration measures and methods used in this respect, he had nothing to do.

Work in concentration camps was just as far removed from defendant SAUCKEL's responsibility. HIMMLER's Posen speech in October 1943 (Document 1919-PS, page 21) reveals that the SS had erected gigantic armament plants of their own. We know that HIMMLER covered his extensive labor requirements by despotic, arbitrary arrest of persons in occupied territories. In Germany itself, he had workers engaged in regular employment arrested on insignificant pretexts and brought into concentration camps, fraudulently vis-a-vis the regular labor offices. This is clearly shown in Document 1063-PS-c by a letter dated 17 December 1942 as well as letters dated 25 June 1943, in which alone a requirement of 35,000 prisoners is signified. Moreover, any correspondence exchanged with reference to concentration camp labor never passes through SAUCKEL's services. As an example, I refer to Document 1584-PS

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containing some correspondence with HIMMLER's Department. Defendant SAUCKEL's name is never mentioned with reference to a conscription of prisoners, and the witnesses have unanimously stated that defendant SAUCKEL had no connection with these matters. This is also confirmed by the statement of the Director of the Ministry Armament's Labor Office, SCHIELTER, who received the required prisoners direct from HIMMLER.

Another subject which must be clared is the conscription of Jews for labor.

This labor conscription is a part of labor conscription of concentration camp prisoners; it was HIMMLER's own personal secret Kingdom. This is revealed for instance by Document R - 91 in which HIMMLER's service orders the arrest of 45 000 Jews in the "Jewish Sector" as concentration camp prisoners.

By the production of a document, L - 61, the Prosecution has attempted to convict SAUCKEL of a share of guilt in this department. This document is a letter dated 26 Nov. 1942 from SAUCKEL's service to the President of the National Labor Office, to the effect that, in agreement with the Chief of the Security Police and Security Department, Jewish workers remaining in the plants must be withdrawn and evacuated to Poland. As a matter of fact, this letter actually confirms that SAUCKEL had nothing to do with Jewish labor in the concentration camps, since Jewish workers were actually withdrawn from his department under the false pretence of evacuation. The measure is indeed solely concerned with the purely technical purpose of

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releasing the Jewish laborers and replacing them by Poles, an operation which could not have been carried out without the participation of SAUCKEL's service.

This letter is the sequel to a correspondence which can be traced back to the period prior to SAUCKEL's assumption of office, and Document L-156 is subsequently concerned with the same technical operation. The unimportant character of the matter is attested by the fact that these letters were not composed at defendant SAUCKEL's headquarters in the "Thueringenhaus" but in an auxiliary office in the Saarlandstrasse. Defendant SAUCKEL disclaims knowledge of these operations and points out that the letters do not bear his original signature but were, according to the routine of his service, made out in his name precisely because they were of minor importance. The fact that the letters begin with the routine business term of "in agreement with", and not "in accordance with" (the orders of) the Chief of Police SP and SD, does not mean that they refer to a connivence but merely to orders received from the authoritative headquarters.

Next, reference has been made to 'Extermination by Labor". But Documents 682-PS and 654-PS dated Sept. 1942 unmistakably show that a secret manoeuvre of HIMMLER and GOEBBELS in cooperation with Reich Minister of Justice THIERACK is here involved. Defendant SAUCKEL is not concerned.

Neither was the conscription of workers in the framework of the Organization Todt under SAUCKELs responsibility. The

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accusations proceeding from document UK-58 in this respect, bearing upon labor conscription methods in the Channel Islands do not therefore concern him. The documents do not show that defendant SAUCKEL was aware of these proceedings or that he could have prevented them.
This disconnection between defendant SAUCKEL's labor jurisdiction and the OT is confirmed in Document L-191, i.e., the report of the International Labor Office in Montreal.

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A special department is the apprehension of labor forces by civil and military departments. This was to a certain extent run as "brutal conscription" and kept secret from defendant SAUCKL because he opposed it and wished to prevent it by every means. To a certain extent, his objections were dismissed by higher authority.

Under this category comes the labor conscription by the SS, Railway, Air Force Building Batallions, SPEER's Transport and Traffic Units, Fortification and Engineeringstaffs and other services.

The exclusion of these contingencies from the scale of ascusations must especially exculpate SAUCKEL, since in these cases SAUCKEL's orders were not authoritative.
Document 204-PS illustrates in this respect the circumstances in which "Transport assistants" were procured in White Russia.

Document 334-PS shows the same with regard to the execution of an independant drive for "Air Force Assistants", which can cast no guilt upon SAUCKEL.

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The commitment of adolescents, which is known as "Heuaktion" under document 031-PS of 14 June 1944 as a point of the charge, lies outside of SAUCKEL's jurisdiction, as it is shown specifically by this document. The IXth Army together with the East Ministry were the originators.

A letter of the co-defendant ROSENBERG to Reich Minister LAMMERS of 20 July 1944 (document 345-PS) refers falsely to the "Consent" of the General Plenipotentiary for Labor Commitment; it states, however, that the defendant SAUCKEL was not connected with an SS-Helper Action and that he refused cooperation in this affair.
According to this, as stated by document 1137-PS of 19 October 1944, an individual office in the ROSENBERG Ministry takes care of the seizure youth and accomplishes the task with its own personnel. Excluding the defendant SAUCKEL's agency, labor is supplied directly here to the armament industry.

Circumventing defendant SAUCKEL's agency, measures also took place which HITLER induced directly by orders to the local offices of the Wehrmacht and of the Civil Administration; it was so, for the labor commitment ordered in the occupied territories for the fortification of the Crimea; this is shown by document UK-68.

The seizure of labor in Holland which was carried out by the Wehrmacht under protest of the labor service offices, is another one of these cases; this is shown in document 3003-PS, in Lt. HAUPT's report and the defendant SEYSS-INQUART has confirmed it.

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An important subject, which is beyond the defendant SAUCKEL's responsibility, refers to all the actions executed as punitive measures against partisans and resistance groups. These are independent measures of the police; I already spoke about their judicial evaluation. Whether they were admissible and could be approved, depends on the circumstances. For example, measures against the resistance movement in France as described in document UK-78 (French Government Report) are excluded here. Therefore, a direct responsibility of defendant SAUCKEL ceases to exist.

Therefore, the very incriminating events which are enumerated in count III, paragraph VIII of the indictment under "deportation" the destinations of which were the concentration camps, are not within the responsibility of the defendant SAUCKEL.

Furthermore, the "deportations" for political and racial reasons which also end under VIII of the indictment as the deportation of Frenchmen into concentration camps, are also not within the responsibility of the defendant SAUCKEL. Furthermore, the resettlements of Slovenes and Yugoslavs described under B (2), also must be excluded.

According to the indictment, under VIII, H 2, only a part of the additionally mentioned approximate 5 million Soviet citizens are mentioned as having been seized by labor commitment, the others were removed by other means to which the regulations of the defendant SAUCKEL did not apply.

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This separation is not of importance on account of the number of people, but because the presumed bad conditions could have taken place just in the f sector, since greater danger of improper treatment existed there.

The prisoners-of-war also are exempted from the field of responsibility of the defendant SAUCKEL. These labor forces did not have to be conscripted , but were only directed.

This was done by means of special labor offices, which were separated from th other procedure with the prisoner camps and collaborated exclusively with the armed forces. The task consisted only of using the prisoners-of-war there, where they were needed.

The defendant SAUCKEL could only request the transfer of the prisoners-of-war such a possibility is referred to by the Prosecution document 1296-PS of 27 July 1943, which refers under III.) to the increase in the use of prisoners-of-war in collaboration with the Army High Command.

The assignment of prisoners-of-war to plants took place only under the supervision of the Wehrmacht; this latter controlled compliance with the Geneva Convention. SAUCKEL is not in any way connected with the death of hundreds of thousands of prisoners-of-war of the Soviet Union in 1941 of whom HIMMLER speaks in his Posnania speech (1919-PS), and for whose replacer workers had to be brought in.

If, in spite of this, in Document USSR-415, i.e. the official Soviet report about the Lamsdorf Camp, the defendant SAUCKEL is

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brought into connection with the claimed ill-treatment of prisoners, then this is done only on the basis of the claim that the number of personnel in the camp was reported to him in a purely business-like manner. The charge cannot be maintained. The document at that does not contain a sufficient listing of time after the year 1941.

The defendant SAUCKEL, although he personally was not responsible, has intervened in excess of his official duties for the care of the prisoners-of-war, because he was interested in their willingness to work. He has issued general decrees. In this way Document SAUCKEL 36 shows that he demands sufficient subsistence, and Document 39, that he demands the same working hours as for German workers; he also points out here the prohibition of disciplinary punishment by the plants.

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A further separation of the accusations raised must be made after the time of the incidents. The defendant SAUCKEL took over his office only on 21 March 1942. His measures, therefore, could have an effect only some time later.

How conditions were previous to that can be seen from some documents from the year 1941. In Document 1206-PS, subsistence through horse- and cat-meat is suggested by leading authorities, and in Document USSR-177 the production of bread of a very inferior quality is suggested. Just a short time before the defendant SAUCKEL's taking office, HITLER in a

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sharp decree orders the confinement of the workers behind barbed wire. It can be said that a low point in the treatment of the foreign workers who at that time were in the Reich had been reached. The idea which one has of the simplicity and the efficiency of the Russians is tragical.

With the taking over of office of the defendant SAUCKEL, a fundamental change has taken place here, which led to a constantly increasing improvement of the situation. The credit for having established a change here, falls, according to the following documents, solely to the defendant SAUCKEL. This is shown in particular by Document EC-318, which represents a record of 15 April 1942 about the first meeting of the defendant SAUCKEL with Reich Minister SELDTE and his specialist staff on the occasion of his taking office. It has been recorded there that it was the defendant SAUCKEL who made the taking over of his office dependent on the condition that the subsistence of the foreigners must be the same as for the Germans and that the fulfillment of his demand was assured him by HITLER, GOERING, the Food Minister DARÉE (sic) and his Secretary of State, BACKE. It furthermore has been recorded there, that the defendant SAUCKEL demanded the removal of the barbed wire and succeeded in this, and finally that he immediately took steps against the low wages of the Eastern workers.

The execution of his fundamental demands was then also immediately employed by the defendant SAUCKEL and followed through with tenacity against the resistance of all authorities.

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The Program of the labor-commitment of 20 April 1942 (Document 016-PS) accordingly takes immediate steps against cruelties and chicaneries and demands that foreign workers be humanely treated; the hope is even expressed that a propaganda effect must surely be achieved by the way in which the labor-commitment was carried out. This thought was frequently reiterated later.
An economical commitment of workers was required in order to counteract the waste which was occurring on the part of influential agencies.

A year later, on 20 April 1943 the defendant SAUCKEL again addressed a declaration of program to all persons concerned in labor-commitment. This is the repeatedly mentioned "Manifesto of Labor Commitment", SAUCKEL Document No 84, which was issued as a warning and a call to battle addressed to all agencies which opposed the serious responsibility of the defendant SAUCKEL. GOEBBELS opposed it under the pretences that the title was too assuming and the propaganda feature of the document essentially too weak. Other agencies just disregarded the copies sent to them and did not forward them, whereupon copies were sent directly to the industries concerned. How this message was handled by the reluctant agencies is shown by its description "notorious manifesto" which was unanimously adopted for it in a session of the Central Planning Board on 1 March 1944 (Document R - 124, page 1779a)

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Defendant SAUCKEL was repreached for having been "too good." I refer to a remark made by General MILCH who was interrogated before the Tribunal, in which he refers to the Central Planning Board and criticizes the ostensibly too lenient treatment of loafers and declares that if anything was undertaken against them, agencies were immediately to be found in Germany which would protect the "poor man" and would intercede for the human rights of others. (Document R-124, 53, Session, Page 1913)

The attitude of defendant SAUCKEL was generally known and has been confirmed by various documents; thus agencies addressed him because of complaints and deficiencies, not in order to make the defendant SAUCKEL responsible for them but to solicit his help, because everybody knew how seriously and eagerly he advocated improvements.

Thus Document 084-PS that is Report of Dr. GUTKELCH of the Central Agency for Eastern People of the ROSENBERG Ministry, dated 30 September 1942 emphasizes in various parts the influence of defendant SAUCKEL and recommends getting into closer touch with him.

Co-defendant ROSENBERG also is pointing at SAUCKEL's strenuous efforts in Document 194-PS (Page 6) i.e. letter of 14 December 1942 to KOCH, Reich Commissioner for the Ukraine.

Co-defendant FRANK likewise on 21 November 1943 asked defendant SAUCKEL (Document 908-PS) for a basic change of the legal position of Poles inside the Reich.

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To what extent do real events correspond with that which has been stated ?

The first question to be dealt with is seizure, which is practically identical with deportation.

It is connected with the examination of the treatment of workers which is designated by the word "slave labor".

The evidence has refuted the error, according to which defendant SAUCKEL on his own responsibility carried out the commitment and seizure of foreign workers through his own organization. It has been established that the supreme agencies of the occupied territories executed the laws regarding compulsory work, which they had received on HITLER's orders. All these agencies had their own administrative system and guarded their departments against the intrusion of others.

A communication of the ROSENBERG Ministry of the East to KOCH the Reich Commissionar for the Ukraine, dated 14 December 1942 (Document 194-PS, page 7) in which co-defendant ROSENBERG particulary refers to the prevailing right of sovereignty questions of Labor commitment, proves that this administrative system had not broken through. Those supreme agencies had their own labor offices, which were organized in detail from the Ministry down to the local office. (Document

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3012-PS, Ordinance of the Supreme Command of the Army dealing with compulsory work in operational sector East of 6 February 1943, Document RF-15, Ordinance of 6 October 1942).

Only with these agencies could defendant SAUCKEL place requests for the number of workers he was ordered to send to Germany and only with them give departmental instructions. These were his limitations and he never went beyond them. He took note of the right of execution, as opposed to the right of instruction. For this task a deputy was appointed for each territory, who in accordance with the ordinance of 30 September 1942 (USA Exh. No. 510) was directly subordinate to defendant SAUCKEL but did not belong to his agency, as he belonged to the territorial agencies. This was expressly confirmed by the witness BAIL - who had been appointed by co-defendant ROSENBERG - expressly for the most important deputy in the East, the Reich Councillor PEUKERT, who belonged to the Staff of the Ministry of the Ministry East.

This Reich Councillor PEUKERT was at the same time consultant for the Economic Staff East of the rear Army Territory, which was close to the field of the civiladministration; in addition to his duties he acted as deputy of the defendant SAUCKEL in the Personnel Union (Personal Union). This is proved by Document 3012-PS, i.e. a note on this document dealing with a conversation of 10 March 1943 concerning labor commitment, in which the position of PEUKERT is noted in the membership list. By this "Personal-Union", created in the interest of the territorial authorities, all unauthorized interference of defendant SAUCKEL was made impossible.

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When co-defendant ROSENBERG complains about the methods of labor mobilization in the East as per document 018-PS, that is in the letter to defendant SAUCKEL dated 21 December 1942, this is to be considered as the complaint of a Minister who does not consider himself in a position to be successful against his subordinate, and thus addresses the presumable source of the difficulties, which had been made for him.

It is true that these difficulties could be removed immediately when defendant SAUCKEL would desist from execution of his order. But execution was just his job, which according to the decree of appointment had to be executed under all circumstances, especially against just such opposition as occurred here on the part of co-defendant ROSENBERG.

Defendant SAUCKEL had to fight against opposition arising from weakness and from departmental egotism, and had to see to it that local agencies would not fail to supply the required manpower due to need for rest, or that other offices would hold it back from selfish interests. "With all means" and "ruthless" are recurring expressions which are employed in the fight against these aspects.

General FALKENHAUSEN, the Military Commander in Belgium and Northern France, during his hearing, mistakenly declared in document RF-15 that defendant SAUCKEL forced him to execute the commitment of labor and

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accomplished it through his own organization. But he had to admit, that this opinion was incorrect when the order signed by him about the introduction of compulsory labor service was put before him.

This presentation is confirmed by the statements of the witnesses TIMM and STOTHFANG.

In France seizure was made by the French administration. The German office above it was not the office of defendant SAUCKEL but of the Military Commander in France, where SAUCKEL had only a deputy.

The negotiations which defendant SAUCKEL conducted in Paris and which were the subject of the evidence lie outside of this activity; they are negotiations of diplomatic nature between the German and French Governments in which SAUCKEL participated. They were held in the German Embassy.

Circumstances in the other spheres were accordingly.

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Also the Recruiting-Commissions which corresponded to the labor commitment staffs in the rear army districts and in operational districts, were by no means offices of the defendant SAUCKEL, as co-defendant ROSENBERG assumes. These recruiting commissions stood nearer to defendant SAUCKEL only because they were composed of experts who

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came from the German labor offices, which belonged to SAUCKEL's Department. They received specialized directives only through their superior office in order to Guarantee a uniform handling of all recruiting regulations. Regulation No. 4 in SAUCKEL document No 15 is authoritative on this point.

This stipulation already issued on 7 May 1942 namely before the nomination of the deputies on 30 September 1942 provides for the sole responsibility of the military and civil authorities of the occupied territories. The deputies mentioned there to whom were assigned the same functions, are the deputies at the German missions in friendly foreign countries.

This was misunderstood by the prosecution and therefore wrong conclusions were arrived at to the disadvantage of the defendant SAUCKEL about the responsibility for recruiting and transport. Also the interpretation of the provision that "all technical and administrative procedures of the Labor Commitment were exclusively within the competence and responsibility" of defendant SAUCKEL is incorrect for the occupied territory.

This stipulation refers solely to the functions in the Reich and lays the basic for the competence of the General Plenipotentiary for labor commitment, of the district labor offices and labor offices; this comes forth from document 016-PS (last paragraph).

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The defendant SAUCKEL therefore, is not directly responsible for the seizure. Indirectly, however, responsibility can be charged to him in that he was aware of these bad conditions and knew that they could not be stopped, but nevertheless demanded more workers.

To this the following must be said: In the defendant ROSENBERG's letter of 21 December 1942 (document 018-PS) the defendant SAUCKEL learned for the first time of the recruiting methods which were designated as mass deportation. At the meeting which followed this in the beginning of January 1943 the defendant ROSENBERG declared that he was opposed to this and that he would not tolerate such procedures. This is also confirmed by his previous letter of 14 December 1942 to KOCH, Reich Commissioner for the Ukraine (document 194-PS), in which he clearly calls the latter's attention to his obligations to proceed legally.

KOCH's memorandum of 16 March 1943 (document Ro 13), of which the defendant SAUCKEL did not learn until here at the trial, gives an explanation, according to which these incidents are said to be exaggerated individual cases, the justification of which is based on the need for measures to be carried out for the restoration of the authority of the occupation officials.
It is expressly declared in this that the recruitment of workers is to proceed with legal means and that steps will be taken in the event of arbitrary measures. (document No. R 13, page 11 and 120).

It did not seem out of the question that it might have been a matter of propagandistic exaggerations and activities,

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to which KOCH particularely refers. In war such a possibility is likely, and the propagandistic style of the MOLOTOV report (document USSR - 151), only emphasizes this.

The defendant SAUCKEL was also supported in this idea as the result of a "manhunt" investigation which was reported to him at Minsk by Field Marshal General KLUGE; it had led to the explanation that it had involved the assembling of workers employed by a labor firm at the time of the retreat.

The Katyn case shows how difficult it is to clarify such events according to the truth when they are made use of propagandistically as combat measures.

As the witnesses from the defendant SAUCKEL's office have confirmed, no other incidents involving these abuses have become known. The cases which were reported are notoriously in part repetitions of the same happenings, which were reported from different sides.

All these reports, however, do not show an endeavor to approve such things, but are a sort of house alarm for the purpose of remedying and improving them.

Can one believe defendant SAUCKEL when he declares that he did not know about the conditons alleged by the Prosecution?

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What reached him through official channels cannot be considered as proof of cognizance, and the witnesses confirm that the so called methods were unknown.

But we have here documents of the authorities of the occupied countries, from which it appears, that the Reich Commissioner in the Ukraine ordered the burning down of houses as a measure of combat resistance against the administration, and there are orders foreseeing such measures. Reports made to the Ministry of the East regarding such events do not lead to penal prosecution, but to the suspension of the procedure, e.g. the Raab case (document 254-PS) and the Mueller case (document 290-PS).

In contradiction to this uncertainty the following must be stated: The measures employed were not accepted by the highest instances, but were secretly made use of by the lower instances. From the preliminary proceedings of the Raab and Mueller cases, it definitely appears, that the existing regulations were unknown at the Ministry.

Defendant SAUCKEL has travelled through the Ukraine, but he was not told just that which might have got the local offices into trouble. The views of defendant SAUCKEL were known, and on the other hand there existed a violent quarrel between the offices of the Reich Commissioner KOCH and the Reich Ministry ROSENBERG. When the documents of both offices which have been submitted are read it can be seen from the file notes that in this battle both sides had collected arguments and that nobody wished to commit himself.

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Since the defendant SAUCKEL himself had no direct authority, it is understandable that the actual conditions remained unknown to him.

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Another point of view has to be considered: various documents mention that a certain pressure has to be applied in the procurement of workers, since the workers had to be obtained "under all circumstances".

Does this give a free hand for all methods?

One must see what was actually done in pursuance to these statements.

The OKH in one case then ordered the increased conscription of workers, and permitted collective seizures, but prohibited collective punishments in connection with this. See document 3012-PS with telephone message of the Economy Staff East to General STAPF of 11 March 1943.
The best picture is shown here in the same document 3012-PS by a remark in the files concerning a discussion of 10 March 1943. Here General NAGEL requests clear guiding principles and State Councillor PEUCKERT wants "reasonable" recruitment methods established by the OKH as the authorized agency. Document 2280-PS is also relevant here, which is the only personal statement of the defendant SAUCKEL concerning this question and which was made in Riga on 3 May 1943. There he states that only "all permissible means" are allowed.
Document 3010-PS is also to be quoted, Economy Inspection South,

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in which on 17 August 1943 the use of "all suitable means" is permitted.

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Orders are issued which contain severe measures against non-compliance with the duty of compulsory labor: deprivation of food and clothing cards. Imprisonment of relatives is threatened and the taking of hostages held out as a prospect.

How about the admissibility of such measures ?

The deprivation of food cards has today become a generally used means of coercion which is based on the retioning system, and which has its cause in the conditions of time. It can be handled easily and does not require any special executive force; on the other hand, it is extremely effective.

Concerning the imprisonment of relatives severe inroads into individual responsibility can be recorded even today. The Hague Convention of Land Warfare protects only against the collective punishment of the population, but it does not protect the members of the family who may be considered as sharing the responsibility in the case of a refusal to work. The French law of 11 June 1943 which was presented as document RF-80 also provides for such responsibility only in the case of deliberate cooperation.

There finally remains the "shooting of a prefect" which the defendant SAUCKEL demanded. Apart from the fact that this statement as such is irrelevant from the point of view of criminal law,

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because it was not actually carried out, its legal meaning is merely a demand to apply the existing French law. This law has been submitted by the Prosecution as document RF-25; decree of 31 January 1943 by the military commander in France: article 2 of which provides for the death penalty.

Also misunderstood by the Prosecution is a statement uttered by the defendant SAUCKEL, according to which one must handcuff the workers in a polite way. (Document RF-[illegible], page, 10, discussion by SAUCKEL in Paris of 27 August 1943.)
But as appears from the context, what is in question here is only a comparison of the clumsy appearance of the police with the obliging manner of the French, without handcuffing being especially praised as a method of seizure: Prussian, clean, correct on the one hand but at the same time obliging and polite on the other hand, that is how one should work.

I refer again to the case of the proposal for "shanghaiing"in document R-124, page 1770, which is known to the Tribunal from the proceedings. The statement which the defendant SAUCKEL has made gives an understandable explanation; according to it, from a legal point it was a question of a preliminary recruitment which was supposed to make the workers inclined to agree to the real obligation later on in the official recruitment offices.

These various incidents: shooting of a prefect, handcuffing, and shanghaiing may be

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but one can reach a complete understanding of the subjective side only if one considers why these statements were made, and from what conditions. they originated.

The background of all these statements is the struggle against resistance and sabotage which in France took stronger and stronger forms. Therefore, it is not a question of remarks of brutality and cynicism, but statements which were intended to counteract the indecision of the authorities.

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Another thought which has to be added here is, whether the defendant SAUCKEL had not exhausted the manpower of the country by his measures to such an extent that more workers could only be obtained by inhuman methods and that the defendant SAUCKEL must have known this.

The important thing here is the figure of the "quotas". It has been established that they were high, but it has also been established that they were not laid down arbitrarily, but only after a careful study by the statistical department. Only a small percentage of the population was actual seized, and it was not the impossibility of performance that was decisive, but rather the will to resist.

In the occupied territories of the East there were large reserves of manpower, available especially among grown - up young people.

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who were not appropriately utilized. The German troops, their ranks seriously thinned, saw the richly populated villages, during their retreat, and felt the same forces shortly afterwards as a reinforcement to the enemy's fighting power.

In France there were likewise many forces which placed themselves under the protection of the Maquis or the protected plants. This is not only confirmed by French/ government report - RF-32 -, but it also appears from a remark which KEHRL, as witness for the co-defendant SPEER, made in the Central Planning on 1 March 1944 (Document R-124, page 68). There this witness states that workers are available to an extensive degree in France. Especially conclusive here is also document 1764-PS (page 6), i.e. the report of Ambassador HEMMEN of 15 February 1944 which deals with the "Reconstruction Program" of Marshal PETAIN, and which refers to the population as untouched by the war which increased by 300,000 young men every year.

If the number of the seized workers is of importance in this connection, it must be compared with the total population figures, and, on the other hand, it must be taken into consideration that Germany did not demand anything what she did not ask of herself to an even higher degree.

The defendant SAUCKEL had to be convinced, not, that people were unable to perform, but that they did not want to perform.

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In order to influence this desire, the Propaganda struggle and the competition of threats of punishment was created by both parties, and this first brought the population of the occupied territories into a state of moral conflict, which became the undoing of many.

The defendant SAUCKEL could with good reason refer to the consequences of the counter propaganda and the deteriorated war situation as cause for the necessity to use coercion; he could, however, on the basis of the evidence to which he had access, not fail to be convinced that the exhaustion of the countries was so great that nothing more could be extracted from them without the use of inhuman methods.

The defendant SAUCKEL believed he could obtain his object, not by using violence but by creating special working conditions.

As example, I refer to the promise which SAUCKEL himself gave on 3 May 1943 in Riga (Document 2228-PS).

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Apart from this there is still another field of labor procurement which must be put in a different category. This is the liberation of Prisonser of War in order to make labor forces available for Germany by "relève" or "transformation".

The French governmental report RF-22 declares both methods of recruiting labor forces as inadmissible.

It is pointed out in the report that the exchange on the basis of "relève" is equal to the enslavement of about triple the number of French workers.

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Against this it must be stated that the replacement workers came at times only for half a year for voluntary work and in succession. After a year and a half all the workers were free; the prisoner was free immediately.

Coercion for the execution of the "relève" did not exist. The offer of release is not legally assailable. Captivity can be terminated any time; Release can also be made subject to a condition. The French report overdoes the moral indignation by quoting a phrase of the President of the News Agency of the United States; this phrase speaks of the "abominable choice" of either to work for the hereditary enemy or to rob a son of his country of the possibility of release from captivity".

To refute this, I refer to the healthy sentiment according to which in the older Russian literature such a change was praised as a patriotic and magnanimous deed on the occasion of the Northern War. Neither the King of Sweden nor Peter the Great have therefore considered the exchange as replacement by a substitute slave.

The "Erleichterte Statut" ("Transformation") is contained in document SAUCKEL No.101. It is the release of a Frenchman form captivity against the acceptance of other work, under the condition that a further French worker would come to Germany according to the "relève" regulations

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No prisoner of war was forced to change his legal position, but whole camps volunteered for it. If a prisoner made use of the possibility offered, he forfited thereby the juridical special labor protection of the Geneva Convention; but this was done in agreement with his Government. This does not constitute a violation of International Law.

The furlough home connected with the change over was ruined by the fact that the people who were granted those furloughs did not return, already after the first convoys. The report RF-22 itself states on page 69, that of the 8,000 people of one leave convoy, 2,000 did not return.

The report states, that the "unfortunate people" were placed before the alternative: "Either you return, or your brothers must die". This consideration, however, did not impress them. Their promise could also not prevent them from immediately joining the Maquis.

The abolition of these furloughs home does not therefore constitute an arbitrary act in slave labor. The reading of the French report can only increase this impression.

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It follows therefore that in this special field also, no seizure of workers which violates the laws of war or which were carried out in an inhuman manner, has been effected by the defendant SAUCKEL.

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I now come to the question: treatment of the workers.
In order to facilitate a proper judgment, a separation of the fields of responsibility is also made here.
The Works manager was responsible for the general labour conditions in the works.
The general conditions of life outside the works was the competence of the German Labour Front.

These spheres of responsibility become conspicuous through the fact that two special representatives for them are mentioned in the indictment, namely KRUPP and Dr. LEY.

The defendant SAUCKEL can be held responsible for the incidents in these spheres only in so far as they are due to his decrees, or as, contrary to his duty, he did not intervene by direct supervision.

The defendant SAUCKEL was directly responsible for the wages.
Already on entering office, he found a schedule of wages which he could not alter on his own responsibility; to do this he had to apply for the authorization of his superior office (i.e. the Four Year Plan) and for the consent of the competent Reich Minister.

The legal regulations summed up in Chapter "Wages question" of my Document Book II show that the basic decrees are not issued by the defendant SAUCKEL, but by the Cabinet Council for the Defense of the Reich (see Document SAUCKEL Nos 50,17 and 58), or by the

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Reich Minister of Economics (Document No. 51) and the Reich Minister of Finance (Document SAUCKEL No. 52).

The defendant SAUCKEL could schedule wages and fix piece-wages only within this framework fixed for him, in so doing he had to consider the interests of the Ministries in question.

So far as it was really possible for the defendant SAUCKEL to do so, he made amelioration possible; thus a series of his decrees show that he granted favours such as premiums, compensatory payments and similar favours (compare Document SAUCKEL Nos. 54 and 58a).

The defendant SAUCKEL's activity, however, aims on the whole at increasing wages by influencing the competent authorities. This is shown in Document 021-PS of 2.4.1943. Therein we find as appendix a treatise with statistical material to the proposition of a basic improvement of wages for Eastern worker

It thus results from a study of the wages sheets from differents periods, that the average wages of Eastern workers have been raised several times during defendant SAUCKEL's term of office.

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It was for the defendant SAUCKEL to regulate the working hours, but within the framework of the superior competence of the Reich Minister of Labour SELDTE. This is shown by Document SAUCKEL No. 67, where SELDTE regulates the working hours for Eastern workers in Par. 3 of the decree of 25.1.44.

The working hours were on principle the same as for the German workers, corresponding to the tempo of the work in the factories.

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This is also admitted by the French government report UK-78-3; the cases enumerated there on page 580 of excessive working hours are contrary to the orders of the defendant SAUCKEL. Since they do not contain any dates of years, it cannot be recognized, if they deal only with temporary measures or with permanent conditions. The same lack of clarity exists in the French report RF-22, page 101; there the minimum working time has been listed as 72 hours, which was increased to 100 hours. This could deal with the work of concentration-camp inmates, which has been left abstruse.

The settlement of the working hours was then changed by Goebbels, who on the basis of his plenipotentiary powers for the waging of total war introduced the 10-hour day for Germans and foreigners, although in practice this could not have been carried out generally. An unreasonably high working-time cannot be maintained and leads to setbacks.

Special attention has been paid by the Prosecution to the regulation of the working hours of female domestic workers from the East, of whom in the place of the 400,000-500,000 girls originally demanded by Hitler, only 13,000 came to Germany.

The Prosecution has presented the memorandum for the employment of these female domestic workers as Document USSR-383. There it is stated under No.9), that a demand for time-off does not exist. The purpose of the regulation was to leave the settlement of the time

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off to the household according to its requirements. Another idea of the regulation is also hardly imaginable, because after all it was intended to accept these female domestic workers in particular into the families, and to give them the opportunity to remain in Germany. They had been selected as girls who were considered particularly dependable, who had reported voluntarily for domestic work. In accordance to the general practice the order was amended by a subsequent decree (in Document SAUCKEL No. 26) simultaneously with the rescinding of all remaining limitations.

The regulation of the working-hours for children took place within the field of German Labor Security-Legislation; in this case it deals with children, who contrary to the decrees of the defendant SAUCKEL, had come to Germany with their parents in an unregulated manner.

Their work can deal with agricultural occupations only, as it is also practiced for German children. In this respect it is pointed out, that during the war, the school-children in Germany from their 10th year upward could be utilized for work, according to the decree of the Reich Youth Leader of 11 April 1942 (Document SAUCKEL No. 67a).

A summarizing discussion by Dr. Blumensaat in the complete Document SAUCKEL No. 89 gives the best information about the whole complex of wages and working-hours, as it was finally regulated by law.

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This immediate responsibility alone, however, cannot serve the defendant SAUCKEL as an excuse, if he knew and tolerated those things which, according to the Prosecution's assertion, branded the transportation and the life in the camps and factories. It is his duty to superintend, even there where he is not directly responsible. Such a sphere of activity, which consisting in the accommodation and feeding of the workers was the responsibility of the works.

As regards the fitting up of the camps for foreigners, the same regulations as for the camps for German workers were applied, by virtue of decrees of the competent Reich Minister of Labor SELDTE (Document SAUCKEL Nos. 42, 43 and 44).

It is indisputable that the accommodation suffered from war exigencies, in particular from the effects of air warfare: the abuses, however, were eliminated as far as possible. The condition of the foreign workers was not different here from that of the German civil population.

The food supply suffered from blockade and want of communications. The established rations, contrary to the notorious statements on the feeding of the Russians laid down according to the schedule of 24.11.41 in Document USSR - 177, amounted to 2540 calories for the Soviet prisoners of war. A further schedule has been submitted with the Affidavit of the witness HAHN as Exhibit SAUCKEL No. 11. According to this

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the ration in the Krupp works amounted to 2,156 calories for the Eastern norm worker, 2.615 calories for the heavy workers, and supervision ensured their careful distribution.

The Reich Food Ministry was responsible for the supply of food.

Strong accusations have been brought in by the Prosecution with regard to both points. These, however, are only possible when the existing regulations have not been observed. It is quite likely that mistakes have been made in this large sphere of activity in the course of years, but the general picture is not only composed of mistakes, whereon a judgment cannot be based. The actual conditions have not been clarified in this procedure to the extent that one could say the abuses were so general and obvious that the defendant SAUCKEL must and did know them.

Contrary of the uncertain statements of the witness Dr. JAEGER is the affidavit of the witness HAHN (Exhibit No. 11) which refutes them to a large extent. The affidavits of the witnesses Dr. SCHARRMANN (Exhibit SAUCKEL No. 17) and Dr. VOSS (Exhibit SAUCKEL No. 18) confirm that no serious abuses existed in their spheres of activity.

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In addition to the obligation of the Works Managers, the German Labor Front had to care for the foreign workers (Document SAUCKEL 15). Its field of activity was amongst other things transportation and the supervision of medical care, as well as general care. The extensive activity which this very large organization developed, has not been described in these proceedings. The basic principles of the German Labor Front can be seen from Document SAUCKEL No. 27, i.e. regulations of the German Labor Front regarding the status of foreign workers in the plants. The aim is emphasized as follows: Maintenance of the willingness to work by observing conditions of contracts, absolutely fair treatment and comprehensive care and control.

The German Labor Front was also responsible for the carrying out of the transportation according to Regulation No. 4 (Document SAUCKEL No. 15). SAUCKEL's instructions are contained therein. This task includes transportation to their place of work. The witnesses Timm and Stothfang and Hildebrandt have testified about this field of activity and not reported anything about bad conditions.

The descriptions in the Molotov-Report (USSR-51) cannot refer to transportation, which was carried out under coordinated direction, but only to so-called "wild" convoys. The same applies to convoys, the destination of which according to the indictment, were the concentration camps.

The great extent to which the defendant SAUCKEL has occupied himself from the very beginning with transportation conditions, is particularly shown by Document 2241-PS submitted by the Prosecution; it contains a decree where conscientious directives for the prevention of the utilization of unsuitable trains are given.

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Mistakes have occurred, especially the incident mentioned in Document 054-PS of the return transport of workers; these had been brought into the Reich before SAUCKEL's time in violation of his basic principles. This was a matter of a single incident, and the necessary orders were issued immediately. The return journey of sick persons in conditions which did not permit them to travel in convoys was prohibited, and Bad Frankenhausen was placed at their disposal. This was followed by the order regarding the accompanying of such transports by male and female assistants of the Red Cross (Document SAUCKEL No. 99).

The carefully and thoroughly organized apparatus of medical care, which worked under the collaboration of the Association of Panel Doctors, has not failed, in spite of the greatest difficulties, rather the great result has been established that no epidemics and serious diseases broke out.

The cases presented by the Prosecution from individual camps of the 60 camps of the Krupp firm can only have arisen from the unusual chain of circumstances. They cannot prove generally bad conditions, of which these conditions could be typical.

Another Document, RF-91, has also been presented, i.e. the medical report of Dr. Fevier of the French Delegation of the German Labor Front, which was composed after the beginning of the invasion on 15 June 1944. Besides faults which it is intended to correct, the report also points out good things; it speaks with partica

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lar acknowledgement of leaders of youth-camps, of the systematic X-Ray examinations, and of the support given by the district administrations, and similiar things.

A real overall picture of conditions could only be obtained by the study of the medical reports of the Health Offices of the German Labor Front existing everywhere.

For the defense of the defendant SAUCKEL, the circumstance is only of importance here in that a distant onlooker like himself could not have a clear picture of bad conditions.

The sanctioning of such bad conditions would have stood in gross contrast to the actions and declarations of SAUCKEL. The defendant SAUCKEL did not acquiesce if a Gauleiter perhaps said: "if somebody has to freeze, then first of all the Russians"; he intervened here, and he stood out against it publicly in his official Handbook of the Commitment of Labor (Document SAUCKEL No. 19).

The defendant SAUCKEL also tried to improve the food outside of his competence; this has been confirmed by several witnesses, amongst others the witness GOETZ (Exhibit SAUCKEL No. 10); it is also shown by the record of the Central Planning Board (Document R-124, Page 1783)

The defendant SAUCKEL did not let matters go on anyhow, but he established his own personal staff, whose members

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travelled around the camps and corrected bad conditions on the spot.

He also attempted to obtain clothing, and let factories work to a large extent for supplying the Eastern workers.

All witnesses who have been heard regarding this problem have again and again unanimously confirmed the benevolent basic attitude of the defendant SAUCKEL.

I refer to the announcements and speeches of the defendant SAUCKEL, which always advocate good treatment. I do not wish to enumerate the documents in detail, and only emphasize the "Manifesto of the Commitment of Labor, Document SAUCKEL No. 84, in which he refers to his binding basic principles, and demands that these be recalled constantly and with emphasis.

I also refer to the speeches to the Presidents of the District Employment Offices (Gauarbeitsaemter) of 24 August 1943 (Document SAUCKEL No. 86) and of 17 January 1944 (Document SAUCKEL No. 88).

The defendant SAUCKEL finally obtained, that even HIMMLER, GOEBBELS and BORMANN acknowledged his ideas as correct. This is shown by document 205-PS of 5 May 1943. This is a memorandum regarding the general basic principles for the treatment of foreign workers. There the basic principles of a regulated commitment of labor are accepted.

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How do the statements of the Prosecution on the ill-treatment of workers as if they were slaves compare with this?

It will be necessary to examine closely whether the cases referred to involve real abuse affecting workers in the process of normal mobilization, or abuses involving the deportation of prisoners and prisoners' work.

Then one should investigate exaggerations and delays which can be explained by human weakness and peculiarities. In my opinion no adequate clarification of incidents has so far been obtained. Press reports already began to appear, which are bound to strengthen doubts as to the traditional concept of how foreign workers live.

The Plan submitted with SAUCKEL Exhibit No. 13 portrays the numerous offices for checking and inspection, relative to the question of laborers. They did not report to the offices of the defendant SAUCKEL conditions of particular abuse. Perhaps the fact that offices were so numerous point to a weakness: it is quite possible that each Governmental Department kept silent about whatever mistakes originated under its own jurisdiction, rather than permitted their coming to the attention of the defendant SAUCKEL, because as a rule the controlling agencies were of a higher standing than that of the defendant SAUCKEL.

This should particularly be considered with regard to relations between the most important agency, the Deutsche Arbeitsfront (German Labor Front), under the leadership of Reich Leader Dr. LEY - and Gauleiter SAUCKEL.

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On closer examination of the document submitted as 1913-PS, an agreement on the creation of "central inspection offices charged with the care and control of foreign labor" it appears to be a carefully set-up "screen" against the defendant SAUCKEL. The document was devised by Dr. LEY and signed on 2 June 1943, then submitted to the defendant SAUCKEL for signature. He did not approve and announce it until 20 September 1943. For that very reason it is quite likely that Dr. LEY did not wish to invite criticism. On the other hand there is also little likelihood that the abuses were general and manifested themselves openly. Otherwise it would obviously have become known to the defendant SAUCKEL through his own control agencies.

In addition to his own staff, the defendant SAUCKEL on 6 April 1942 appointed the Gauleiters as "Commissioners for the Mobilization of Labor, impressing upon them as their foremost duty the supervision needed for enforcement of his orders. This becomes apparent from SAUCKEL document No 9, figure 5; the same holds true for document 633-PS of 14 March 1943.

Several Gauleiters were examined by the Tribunal as witnesses, and they have confirmed that the supervision was carried out as ordered, and that SAUCKEL checked it through members of his staff. No abuses were reported.

After due consideration of things, whom should one believe? Are we concerned here with exaggerated laments or do findings

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of a contrary nature deserve credit?
There is no testimony by the French who, according to document UK-78/3 IIIrd study, Chapter Ib, were taken to the real slave centers; There is no testimony by the Russians who, according to document USSR-51, were sold for 10 to 15 Reichsmark.

In any case one fact speaks in favor of the defendant SAUCKEL, namely the fact that workers were always willing and industrious - as always confirmed by competent witnesses - and that when the collapse came no rising occurred in which the workers would have given vent to their natural wrath against the slave owners.

I have summarized actual happenings and have appraised them juridically. All this however, must appear to be juridical trifles where a higher responsibility is concerned.

It has been voiced here that it will not do to let the insignificant Works' Managers take the blame, but that the moral responsibility must go to the highest Reich Government offices; of their own volition they should have introduced corrections on a larger scale to cope with difficulties inherent in the circumstances of that time.

This might be in order for offices which had the power and the means of alleviation. The defendant SAUCKEL and his small personal staff had merely been incorporated in a Ministry already in existence, and he did not have such means at his disposal. His authority consisted of a narrowly circumscribed

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power to give directives on the mobilization of labor, and he has used it untiringly.

The Works Managers of the armament industry were formed into an independent administration, and outwardly separated from so-called bureaucrats. The duty of self-preservation corresponds to this administrative independence.

Consequently, if the case arose that something should be done to improve the safety of foreign workers, of their situation in armaments works, it would have been the duty of such establishments and of the Armaments Ministry under whose supervision they operated to deal with the matter.

It was not the duty of the office of the defendant SAUCKEL to intervene in these matters, as they were under the Armaments Ministry. This is clearly evident from document 4006-PS with decree of 22 June 1944: this is borne out by the most intimate personal relation between the Armaments Minister and HITLER which made the former the most influential man in the economic sphere.

If greater responsibility were to exist for mistakes made in the factories, such responsibility can be placed only where there is knowledge of such conditions and power to correct them.

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There is still a <u>question of law</u> to be considered, with regard to the indictment; namely whether the position of the General Commissioner for Labor Commitment is determined by Article 7 or Article 8, i.e. whether the defendant SAUCKEL was an independent government official or whether he had to carry out orders.

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The recruitment of labor took place from time to time upon HITLER's special order, as part of the general program, and the subsequent distribution alone was left to SAUCKEL. This is also confirmed by the fact that defendant SAUCKEL always refers to HITLER's "Orders and Commands", as in the Manifest of the General Plenipotentiary for Labor Commitment (GBA) (Document SAUCKEL No. 84, fig, 7) and in the circular to the "Gauleiter" (Document SAUCKEL No. 83) and others. From this also derives the fact that defendant SAUCKEL from time to time specially reports execution of the orders, as well as the beginning and end of his official trips. (Document 556-PS of 10 January 44 and 28 July 43).

It is an argument against independence, that according to the nomination decree, the defendant SAUCKEL was immediately subordinate to the Four Year Plan and incorporated into the Reich Ministry for Labor which had been preserved with its State secretaries. Only two departments were placed at his disposal.

If the kind of responsibility is to be determined, it can be only within the limits of Art. 8 of the Charter.

Herewith I conclude my exposition regarding the special sphere of activity/labor commitment.

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The defendant SAUCKEL is accused on all counts of the indictment over and beyond labor commitment. Particular isolated acts are however not charged against him as active agent.

A closer characterization of the accusation has been effected in the course of the proceedings only in regard to the concentration camps. In this connection, however, it has been proved by a sworn affidavit of witness WALKENHORST (Exhibit No. 23) and a statement in lieu of oath of witness Dieter SAUCKEL (Exhibit No. 9) that no order for the evacuation of the Buchenwald camp upon the approach of American troops was given.

Knowledge and approval of conditions at the camp cannot be deduced from two visits of the camp before 1939, as the excesses submitted by the Prosecution did not yet exist.

Nor did the local proximity of the camp to the Gauleitung of the defendant SAUCKEL bring about any close connection with the SS staff, as it had its seat in Kassel and Magdeburg.

Finally must be added the inner human convictions of defendant SAUCKEL which resulted from his previous career, and which was irreconcilable with HIMMLER's point of view.

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What part can defendant SAUCKEL have played in the conspiracy? He was Gauleiter in Thuringia and did not rise above the rest of the Gauleiters. His activities and his aims can be deduced from his fighting speeches, which have been submitted as

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document SAUCKEL No. 95. These persistently show the fight for "Liberty and bread" and the desire for a real peace.

For an activity of many years in the Party, the party program was authoritative for defendant SAUCKEL; the wishes contained therein required neither war nor the extermination of the Jews. The practical realization of the program alone could disclose the reality. For the convinced Party member, however, the official explanation of the event was authoritative and it met with no doubts.

Up to his nomination as the Plenipotentiary General for Labor Commitment in March 1942, defendant SAUCKEL did not belong to the narrow circle of those who had access to HITLER's plans. He had to rely upon the press and the broadcasts like everybody else. He had no contact with the leading men. This is shown somewhat tragically by his action, so often laughed at, in boardening a submarine as an ordinary seaman for a raid into enemy waters.

That is not the way to participate in conspiracies.

As a faithful follower of HITLER, defendant SAUCKEL remains alone in the circle of those in the know. It is understandable if the extreme men avoided him owing to his well known opinions, Also he was not initiated into the secret of people who at the same time wished to be both HITLER's friends and murderers and he was not advised by the group of people

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who were HITLER's enemies, but who kept their truisms secret with a novel kind of courage.

Faithful to the end, defendant SAUCKEL cannot to this day understand what has happened. Must he, like a heretic, recant his error in order to find grace?

He lacks the contact with reality which would make understanding possible.

Does the sentence depend on his having unknowingly served a good or a bad cause?

Nothing is either good or bad, but thinking makes it so. One thing however is always and under any circumstances good, and that is GOOD INTENTIONS.